THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

CYNTHIA MENTELE, *et al.*, Plaintiffs, v. JAY R INSLEE, *et al.*, Defendants.	Case No. 3:15-cv-05134-RBL **JOINT STATUS REPORT and DISCOVERY PLAN**

Plaintiffs and Defendants jointly submit this Joint Status Report and Discovery Plan, pursuant to the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement, dated March 10, 2015 (Dkt. 8), Fed. R. Civ. P. 26, and Local Civil Rule ("LCR") 26.

1. Nature and Complexity of the Case.

A. Plaintiffs' Brief Statement of the Case: Plaintiffs are family child care providers who operate child care businesses in their homes and receive child care subsidies from the State. Plaintiffs are not members of the exclusive bargaining representative, Defendant SEIU Local 925 ("SEIU Local 925"). Nevertheless, at various times between March 5, 2012 and December 31, 2014, the State automatically seized dues equivalent union fees from Plaintiffs' child care

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subsidy payments and paid those fees to SEIU Local 925.

This case seeks to enforce and expand the United States Supreme Court's decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), to Washington family child care providers who either have never joined the union or have resigned their union membership since March 5, 2012. *Harris* held the First Amendment does not permit a State to compel personal care providers to subsidize speech on matters of public concern by a union they have not joined. This 42 U.S.C. § 1983 civil rights class action concerns whether it is constitutional for a State to compel citizens to accept a mandatory representative to lobby government over policies that affect their private businesses in providing family child care services.

Plaintiffs bring this suit to enjoin and declare unconstitutional: (a) RCW 41.56.028, RCW 41.56.080, and RCW 41.56.113(1)(b), along with Articles 1 and 4.1 of the Collective Bargaining Agreement ("CBA") between the State of Washington and SEIU Local 925, to the extent that those statutes and articles mandate an exclusive bargaining representative on behalf of all family child care providers (Count I); and (b) those portions of RCW 41.56.113(1)(b)(i) and RCW 41.56.122 applicable to family child care providers, along with Article 5 (before it was superseded by a new Memorandum of Understanding (MOU) on September 18, 2014) of the CBA, and similar language in any future CBAs which implement those statutory provisions, which forced citizens who are family child care providers to accept and financially support a mandatory representative to speak to and petition the State over its child care policies (Count II for which class certification is sought). Plaintiffs also seek to recover for themselves and on behalf of a class of similarly-situated child care providers all fees that have been wrongfully deducted from their subsidy payments and paid to SEIU Local 925 since March 5, 2012.

Plaintiffs consider this case to be of relatively straightforward with regard to the matters

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of class certification, liability, and damages, if liability is found. The case should be decided on cross-motions for summary judgment based on Supreme Court precedent. Calculating the individual amount of the compensatory damages of the fees seized for each Plaintiff and class member will not be complex or difficult because these amounts are contained in Defendants' business records.

B. Defendant SEIU 925's Brief Statement of the Case:

Washington pays family child care providers to provide child care services for low-income and at-risk children through several State programs. As in about 10 other states, Washington law allows the child care providers to democratically select a representative for collective bargaining with state officials, pursuant to the State's public employee labor relations law. RCW 41.56.028. The child care providers chose to be represented by defendant SEIU Local 925. Plaintiffs are four child care providers in the bargaining unit.

Count I of Plaintiffs' complaint alleges that the system of exclusive representative collective bargaining violates the First Amendment. Three other courts have recently rejected the same legal theory, in other cases that also were brought by the National Right to Work Legal Defense Foundation. See *Jarvis v. Cuomo*, 2015 WL 1968224 (N.D.N.Y. Apr. 30, 2015); *D'Agostino v. Patrick*, 2015 WL 1137893 (D. Mass. Mar. 13, 2015); *Bierman v. Dayton*, 2014 WL 5438505 (D. Minn. Oct. 22, 2014). Count I presents a legal issue that should be resolved by a pre-trial motion.

Count II of Plaintiffs' complaint (which, unlike Count 1, is brought as a putative class claim) challenges the State's prior deduction of agency fees from the subsidy payments to family child care providers who had not become union members. The agency fees were deducted pursuant to Washington law and the then applicable collective bargaining agreement between the

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State and Local 925. The collective bargaining agreement was revised to end the deduction of agency fees after the Supreme Court's recent, 5-4 decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), so there are no ongoing deductions. Local 925 contends that class certification is not appropriate for a damages claim based for the past collection of agency fees because, among other things, the plaintiffs cannot adequately represent the putative class members because of fundamental conflicts of interest. Local 925 also denies any liability under 42 U.S.C. § 1983. With respect to Count II, the resolution of merits issues should await a decision on the pending class certification motion.

C. Defendants Inslee's, Quigley's, and Schumacher's Brief Statement of the Case:

Since July of 2014, the State no longer deducts union dues or fair share fees from family child care providers who have not authorized the deductions. None of the plaintiffs are being subjected to compelled dues deductions. Accordingly, Count II of Plaintiffs' lawsuit is moot and lacks a justiciable controversy.

With respect to Count I, Plaintiffs are not compelled to associate with SEIU 925 nor prevented from expressing their views or associating with any group of their choice. The State's policy decision to listen to an exclusive bargaining representative does not impair Plaintiffs' individual rights to speech and association. Count I presents a legal issue that should be resolved by a pre-trial motion.

State Defendants agree that the case against the state Defendants should be straightforward with respect to liability, and should be determined on cross motions for summary judgment. Damages are not being sought against the State Defendants.

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2. Deadline for Joining of Additional Parties.

The parties agree the deadline for adding additional parties should be June 30, 2015, except if the Court denies class certification, plaintiffs should have three weeks after the denial to add additional plaintiffs.

3. Consent to Assignment of Case to Honorable Karen L. Strombom, United States Magistrate Judge.

No.

4. Discovery Plan.

A. Date for Rule 26(a) Initial Disclosures: The parties exchanged their initial disclosures on June 1, 2015, pursuant to the Order of March 10, 2015 (Dkt 8).

B. Discovery Subjects, Timing, and Potential Phasing: The principal topics for discovery include the allegations and evidence in the underlying claim, class certification, and the nature and amount of damages to which plaintiffs and class members, if class is certified on Count II, will be entitled if they are able to establish liability. To accommodate the existing work deadlines and vacations of defendants' counsel, the parties agree that class-related discovery (written discovery and depositions) will be completed on or before August 7, 2015. However, such class depositions of plaintiffs may also include issues relating to the merits of the litigation. All other merits discovery will begin after the Court's ruling on the class certification motion.

C. Electronically Stored Information: The parties will meet and confer regarding the production of electronically stored information.

D. Privilege Issues: The parties anticipate that there may be issues of privilege and confidentiality as discovery progresses, for example a need for an agreement allowing privileged documents to be recovered from the producing party without a finding of waiver. The parties believe that those issues may be addressed at a later time if needed.

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E. Discovery Limitations: The parties believe the presumptive discovery limits under the Federal Rules of Civil Procedure should not be altered at this time. This statement is without prejudice to the right of any party to seek relief from those limitations should future circumstances warrant.

F. Discovery Orders: The parties do not anticipate the need for additional orders at this time. The parties agree that this representation is without prejudice to the right of any party to seek additional orders should future circumstances warrant.

5. Case Management Topics Under LCR 26(f)(1).

A. Prompt Case Resolution: The parties are committed to working together to resolve this case as expeditiously as reasonable possible.

B. Alternative Dispute Resolution: The parties will further discuss the issue of alternative dispute resolution ("ADR") for Count II after the Court rules on plaintiffs' pending class certification motion. The parties do not see Count I being amenable to ADR.

C. Related Cases: The parties know of no pending related cases involving child care providers.

D. Discovery Management: (i) The parties exchanged initial disclosures on June 1, 2015; (ii) The parties will address the sharing of third-party, if any, discovery as the need arises; (iii) The parties do not anticipate requesting discovery or case management conferences at this time; (iv) The parties do not anticipate requesting the assistance of a Magistrate Judge for settlement conferences; (v) The parties agree to use the pretrial order format set forth in LCR 16.1; and (vi) The parties do not request any other orders under LCR 16(b) at this time.

E. Anticipated Discovery: The parties anticipate seeking documents and information related to class certification, the claims, amounts of damages, and defenses.

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F. Phasing Motions on Potentially Dispositive Issues: The parties agree that while dispositive pre-trial motions practice is likely, no phasing is necessary or appropriate at this time. The parties will revisit this issue as the case progresses. Plaintiffs filed a motion for class certification and appointment of class counsel on April 28, 2015, which is currently noted for July 24, 2015. To accommodate the existing work deadlines and vacations of defendants' counsel, the class certification motion will be renoted for September 25, 2015, class-certification related discovery will be completed by August 7, 2015, defendants will file their responses on or before September 11, 2015, and plaintiffs will file their reply on or before September 25, 2015.

G. Preservation of Discoverable Information: The parties intend to comply with all requirements regarding preservation of discoverable information. Counsel have advised their clients of the requirements concerning preservation of discoverable information.

H. Privilege Issues: The parties anticipate there may be some issues of privilege and confidentiality as discovery progresses but agree they may be addressed at a later time when necessary.

I. Model Protocol for Discovery of Electronically Stored Information ("ESI"): The parties expect to adopt some, if not all, of the provisions of the Model Agreement Regarding Discovery of ESI.

J. Alternative to Model ESI Protocol: The parties do not expect to utilize any alternative to the Model ESI Protocol.

6. Discovery Completion Date.

The parties agree the deadline for class-related discovery should be August 7, 2015. The parties agree the deadline for all other discovery, expert and non-expert, should be set for six (6) months after the Court decides the class certification motion.

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7. **Case Bifurcation.**

The parties do not anticipate any bifurcation of the trial at this time, but agree that the issue of whether bifurcation is appropriate should not be definitively decided at this early juncture. The parties propose to defer the issue and commit to meet and confer in good faith in an attempt to reach agreement on the issue of bifurcation.

8. Pretrial Statements and Order.

The parties will meet and confer ninety (90) days prior to the trial date regarding whether to retain the pretrial order requirements of LCR 16(e), (h), (i), and (k), and 16.1.

9. Individualized Trial Program Utilization or ADR.

The parties do not intend to utilize the Individualized Trial Program set forth in LCR 39.2. The parties will explore ADR for Count II after the Court rules on Plaintiffs' pending class certification motion. The parties do not see Count I being settled.

10. Other Suggestions for Shortening or Simplifying Case.

The parties have no other suggestions for shortening or simplifying the case at this time.

11. Trial Date.

The parties agree the trial date should be set for twelve (12) months after the Court decides the class motion; while the deadline for filing dispositive motions should be set for seven (7) months after the Court decides the class motion, which is one (1) month after the close of discovery.

12. Jury or Non-July Trial.

No party has demanded a jury trial.

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13. Trial Days.

The parties believe four (4) trial days should be scheduled, although defendants believe more days may be necessary if class certification is granted.

14. Trial Counsel.

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15. Trial Counsel Problem Dates for a Trial Date.

At this time, trial counsel have no problem dates.

16. Status of Defendants' Service.

Service on all parties has been completed.

17. Scheduling Conference Desirability Prior to Issuance of Scheduling Order.

At this time, the parties do not see a need for a scheduling conference.

18. Corporate Disclosure Statement.

No party is a corporation.

DATED this 8th day of June, 2015.

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